

United States District Court
Northern District of California

123456

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

8 ST. LOUIS POLICE RETIREMENT SYSTEM, *on behalf*
9 *of itself and All Others Similarly Situated and*
Derivatively on behalf of Nominal Defendant
ABAXIS, INC..

Plaintiff,

vs.

13 CLINTON H. SEVERSON, *et al.*,

Defendants,

ABAXIS, INC.,

16 || Nominal Defendant.

Case No.: 12-CV-5086 YGR

**ORDER RE: FURTHER BRIEFING AND
RESCHEDULING HEARING ON MOTIONS TO
DISMISS**

17 Currently pending before the Court are: (1) the Motion of Director Defendants Severson,
18 Bastiani, Casey, Evenhuis, Singh Altman And Tucker And Nominal And Company Defendant
19 Abaxis, Inc. To Dismiss the Complaint Pursuant To F.R.C.P 12(B)(1), 12(B)(6), and (2) the
20 Motion of Officer Defendants Severson, Santa Ines, Aron, Ostoich, Wood And Mulroy To Dismiss
21 Count IV of the Complaint Pursuant To F.R.C.P. 12(B)(1), 12(B)(6).

22 As part of their reply briefing, the Director Defendants submitted a Declaration of Alberto
23 Santa Ines describing, and attaching minutes of, an October 24, 2012 meeting of the Board of
24 Directors (the "Board") and Compensation Committee of the Board (the "Compensation
25 Committee") of Abaxis, Inc. The declaration and minutes indicate that the Board and the
26 Compensation Committee retroactively ratified and approved all Restricted Stock Units ("RSUs")
27 issued in excess of the previous limits under its 2005 Equity Incentive Plan. Board and
28 Compensation Committee further resolved that the "the monetary value of the RSU Share

1 Consideration for each RSU Share is equal to the closing price of the Company's Common Stock
2 on the date of issuance of such RSU Share."

3 The Court seeks further briefing as to the effect of this action of the Board and
4 Compensation Committee on Plaintiff's claims of damages to the Company (Claims 1, 2 and 3),
5 and the claim for unjust enrichment/restitution from the Officer Defendants (Claim 4).

6 Plaintiff shall file a further brief of no more than 10 pages by **April 16, 2013**. Defendants
7 shall file further briefs in response to the points raised therein, of no more than 6 pages each, by
8 **April 23, 2013**. The hearing currently set for April 9, 2013 is **CONTINUED to May 7, 2013**, at 2:00
9 p.m..

10 **IT IS SO ORDERED.**

11 **Date: April 5, 2013**



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE